



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

Office of the Inspector General, Petitioner

vs.

██████████, Respondent

DECISION

Case #: FOF - 170636

Pursuant to petition filed December 7, 2015, under Wis. Admin. Code §HA 3.03, and 7 C.F.R. § 273.16, to review a decision by the Office of the Inspector General to disqualify ██████████ from receiving FoodShare benefits (FS) one year, a hearing was held on Thursday, February 18, 2016 at 10:30 AM at , Wisconsin.

The issue for determination is whether the respondent committed an Intentional Program Violation (IPV).

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

Office of the Inspector General
Department of Health Services - OIG
PO Box 309
Madison, WI 53701

Respondent:

██████████
████████████████████
██████████

█

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. The respondent (CARES # ██████████) is a resident of ██████ who received FS benefits in Dane County from December 27, 2012 through June 1, 2015.

2. On December 28, 2012, respondent submitted an application for FS benefits to the county agency in Wisconsin. He reported an address in Madison. The only income reported was Social Security disability income of \$639/month. Respondent reported he recently moved to Wisconsin from Illinois.
3. On December 28, 2012, the agency issued a Notice of Decision to the respondent, informing him that he would receive FS benefits of \$96 for December, 2012 and \$200/month effective January 1, 2013. The notice also informed the respondent of the requirement to report to the agency within 10 days if he moved or had a new address. The agency also mailed an Enrollment & Benefits booklet to the respondent.
4. On November 5, 2013, the respondent submitted a renewal application. He reported an address in Madison. He reported unearned income from Social Security disability of \$753/month. The agency conducted a phone interview with the Petitioner. He reported that he had been out of state for some time helping family members.
5. On November 6, 2013, the agency issued a Notice of Decision to the respondent, informing him that he would continue to receive FS benefits of \$189/month effective December 1, 2013. The notice informed him of the requirement to report any change in address to the agency within 10 days.
6. On December 1, 2014, the respondent submitted a renewal application. He reported an address in Madison. He reported SS income of \$777/month. The agency conducted a phone interview with the Petitioner and questioned where he stays. He reported that in Wisconsin, he mainly stays with a sister. He also reported that due to a death in the family, he had been spending a lot of time in Illinois taking care of his nieces. Petitioner requested that his address remain as the agency address.
7. On December 9, 2014, the agency issued a Notice of Decision to the respondent, informing him that he would continue to receive FS benefits of \$16/month effective January 1, 2015. The notice informed him of the requirement to report any change in address to the agency within 10 days.
8. From January, 2013 – December, 2013, respondent used his Wisconsin FS card for 22 transactions in Wisconsin and for 118 transactions in Illinois. From January, 2014 – December, 2014, respondent used his Wisconsin FS card for 5 transactions in Wisconsin (all 5 transactions occurred in March) and for 65 transactions in Illinois. From January, 2015 – May, 2015, respondent used his Wisconsin FS card for 2 transactions in Wisconsin (both transactions occurred in March) and for 17 transactions in Illinois.
9. When in Wisconsin, the respondent lived in homeless shelters. He used the agency address for individuals who are homeless as his mailing address.
10. A Transunion Consumer Credit Report reported Petitioner's current address in [REDACTED], Illinois and two previous addresses in [REDACTED], Illinois and [REDACTED], Illinois.
11. The agency received information from the Social Security Administration in May, 2015 that Petitioner reported an address in [REDACTED], Arkansas to that agency.
12. The agency obtained a bank statement of the respondent from October – November, 2013. The statement indicates all ATM transactions on the respondent's account occurred in Illinois.
13. On December 11, 2015, the petitioner prepared an Administrative Disqualification Hearing Notice alleging that respondent was a resident of Illinois when he received FS benefits from Wisconsin.

DISCUSSION

An intentional program violation of the FoodShare program occurs when a recipient intentionally does the following:

1. makes a false or misleading statement, or misrepresents, conceals or withholds facts;
or
2. commits any act that constitutes a violation of the Food Stamp Act, the Food Stamp Program Regulations, or any Wisconsin statute for the purpose of using, presenting, transferring, acquiring, receiving, possessing or trafficking of FoodShare benefits or QUEST cards.

FoodShare Wisconsin Handbook, § 3.14.1; *see also* 7 C.F.R. § 273.16(c) and Wis. Stat. §§ 946.92(2).

An intentional program violation can be proven by a court order, a diversion agreement entered into with the local district attorney, a waiver of a right to a hearing, or an administrative disqualification hearing, *FoodShare Wisconsin Handbook*, § 3.14.1. The petitioner can disqualify only the individual found to have committed the intentional violation; it cannot disqualify the entire household. Those disqualified on grounds involving the improper transfer of FS benefits are ineligible to participate in the FoodShare program for one year for the first violation, two years for the second violation, and permanently for the third violation. Although other family members cannot be disqualified, their monthly allotments will be reduced unless they agree to make restitution within 30 days of the date that the FS program mails a written demand letter. 7 C.F.R. § 273.16(b).

In order for the petitioner to establish that an FS recipient has committed an IPV, it has the burden to prove two separate elements by clear and convincing evidence. The recipient must have: 1) committed; and 2) intended to commit a program violation per 7 C.F.R. § 273.16(e)(6). In *Kuehn v. Kuehn*, 11 Wis.2d 15 (1959), the court held that:

Defined in terms of quantity of proof, reasonable certitude or reasonable certainty in ordinary civil cases may be attained by or be based on a mere or fair preponderance of the evidence. Such certainty need not necessarily exclude the probability that the contrary conclusion may be true. In fraud cases it has been stated the preponderance of the evidence should be clear and satisfactory to indicate or sustain a greater degree of certitude. Such degree of certitude has also been defined as being produced by clear, satisfactory, and convincing evidence. Such evidence, however, need not eliminate a reasonable doubt that the alternative or opposite conclusion may be true. ...

Kuehn, 11 Wis.2d at 26.

Wisconsin Jury Instruction – Civil 205 is also instructive. It provides:

Clear, satisfactory and convincing evidence is evidence which when weighed against that opposed to it clearly has more convincing power. It is evidence which satisfies and convinces you that “yes” should be the answer because of its greater weight and clear convincing power. “Reasonable certainty” means that you are persuaded based upon a rational consideration of the evidence. Absolute certainty is not required, but a guess is not enough to meet the burden of proof. This burden of proof is known as the “middle burden.” The evidence required to meet this burden of proof must be more convincing than merely the greater weight of the credible evidence but may be less than beyond a reasonable doubt.

Further, the *McCormick* treatise states that “it has been persuasively suggested that [the clear and convincing evidence standard of proof] could be more simply and intelligibly translated to the jury if they were instructed that they must be persuaded that the truth of the contention is highly probable.” 2 *McCormick on Evidence* § 340 (John W. Strong gen. ed., 4th ed. 1992).

Thus, in order to find that an IPV was committed, the trier of fact must derive from the evidence a firm conviction as to the existence of each of the two elements even though there may be a reasonable doubt as to their existence.

In order to prove the second element, i.e., intention, there must be clear and convincing evidence that the FS recipient intended to commit the IPV. The question of intent is generally one to be determined by the trier of fact. *State v. Lossman*, 118 Wis.2d 526 (1984). There is a general rule that a person is presumed to know and intend the probable and natural consequences of his or her own voluntary words or acts. See, *John F. Jelke Co. v. Beck*, 208 Wis. 650 (1932); 31A C.J.S. Evidence §131. Intention is a subjective state of mind to be determined upon all the facts. *Lecus v. American Mut. Ins. Co. of Boston*, 81 Wis.2d 183 (1977). Thus, there must be clear and convincing evidence that the FS recipient knew that the act or omission was a violation of the FS Program but committed the violation anyway.

Based upon the record before me, I find that the petitioner has established by clear and convincing evidence that the respondent intentionally violated FS program rules, and that this violation was the first such violation committed by the respondent. At the hearing, the respondent testified that he was back and forth between Wisconsin and Illinois a lot from 2013 - 2015. He testified that he was taking care of his sister and her children. He also stated that he moved to Illinois in the middle of 2014 and stayed through 2015. His sister passed away in January, 2015 and he stayed to take care of her children. When in Wisconsin, he testified that he primarily lived in shelters.

The respondent did report to the agency on two occasions that he spent time in Illinois. He did not, however, report that he had moved to Illinois. The FS regulations in Wisconsin allow a recipient to continue to receive benefits if they are out of state on a temporary basis. A temporary absence must not be longer than 2 full consecutive calendar months past the month of departure. FS Handbook, § 3.2.1.2.

The evidence produced by the agency clearly shows that the respondent spent the majority of 2013, 2014 and 2015 in the state of Illinois. His Wisconsin FS card was used regularly in every month of 2013, 2014 and 2015. He did use his Wisconsin FS card in 6 months of 2013 for a total of 22 transactions. However, in 2014 and 2015, he had only 5 transactions in March, 2014 and 2 transactions in March, 2015. This evidence is consistent with the respondent's testimony that he moved to Illinois in 2014 to take care of his sister and her family. Respondent did not report that he had moved or that his absence from Wisconsin exceeded two consecutive months.

Based on the evidence, I conclude the respondent committed a program violation when he failed to report that he had moved to Illinois and that he intended to commit a program violation by continuing to claim Wisconsin residency when he was residing in Illinois. Therefore, the petitioner correctly seeks to disqualify the respondent from the FS program for one year.

CONCLUSIONS OF LAW

1. The respondent violated, and intended to violate, the FS program rule specifying that a FS applicant/recipient must provide accurate and truthful information regarding residence.
2. The violation specified in Conclusion of Law No. 1 is the first such violation committed by the respondent.

NOW, THEREFORE, it is

ORDERED

That the petitioner's determination is sustained, and that the petitioner may make a finding that the respondent committed a first IPV of the FoodShare program and disqualify the respondent from the program for one year, effective the first month following the date of receipt of this decision.

REQUEST FOR A REHEARING ON GROUNDS OF GOOD CAUSE FOR FAILURE TO APPEAR

In instances where the good cause for failure to appear is based upon a showing of non-receipt of the hearing notice, the respondent has 30 days after the date of the written notice of the hearing decision to claim good cause for failure to appear. See 7 C.F.R. sec. 273.16(e)(4). Such a claim should be made in writing to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875.

APPEAL TO COURT

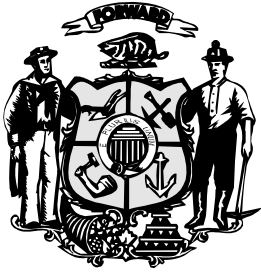
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, WI 53703, **and** on those identified in this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing request (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 29th day of March, 2016

\sDebra Bursinger
Administrative Law Judge
Division of Hearings and Appeals

c: Office of the Inspector General - email
Public Assistance Collection Unit - email
Division of Health Care Access and Accountability - email
[REDACTED] - email



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on March 29, 2016.

Office of the Inspector General
Public Assistance Collection Unit
Division of Health Care Access and Accountability
[REDACTED]@wisconsin.gov